

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13753, of Capital Buildings, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Section 5102) to use the first floor of the subject premises as an amusement arcade in addition to another permitted use in a C-2-A District at the premises 7700 Georgia Avenue, N.W., (Square 2957, Lot 21).

HEARING DATE: May 26, 1982
DECISION DATE: May 26, 1982 (Bench Decision)

FINDINGS OF FACT:

1. The subject site is located on the west side of Georgia Avenue between Juniper and Hemlock Streets. It is known as premises 7700 Georgia Avenue, N.W. The site is located in a C-2-A District.
2. The site is improved with a two story detached structure which appears from its design to have been used formerly as a dwelling before a store front addition was constructed.
3. A Certificate of Occupancy, No. B-126439, was issued on August 11, 1982, to use the ground floor of the subject premises as a variety store, pre-packaged foods, tobacco products, cigarettes and patent medicine.
4. The applicant now proposes to use the subject premises as an amusement arcade in addition to the aforementioned permitted use of a variety store.
5. To the north of the subject site there is a beauty parlor, a building for lease, the Fancy Dancers Bar and night club, a scales and weight system company, a liquor store, a barber shop and Kentucky Fried Chicken store located on the Georgia Avenue frontage in the C-2-A District. To the east across Georgia Avenue there is a five story apartment house and office building in the C-2-A District. To the northeast there is Georgia Avenue followed by the Rodmans Drug Store shopping center. To the south there is a venetian blind shop, a massage parlor called the Bath House, an appliance store and a bar and club called Chances R located on the Georgia Avenue frontage in the C-2-A District. To the west there is a fifteen feet wide public alley followed by residentially developed property in the R-2 District.

6. The applicant, in addition to the services of a variety store, provides three video machines. The three video machines are permitted as a matter-of-right as accessory to the principal use. The applicant proposes to expand the number of video machines to ten. Such a number exceeds the limit allowable for an accessory use. The applicant therefore seeks a variance from the use provisions for the requested increase in the number of machines.

7. The applicant testified that it is difficult for a small deli such as the present use to compete with its surrounding competitors. The machines provide additional revenue. There is one side of his store which is vacant and could accommodate the seven additional video machines.

8. The proposed expansion of the business would not change its operations. The business would still operate from 11:00 A.M. to 11:00 P.M., Monday through Saturday. No children would be allowed on the premises until after 3:30 P.M. The applicant would still continue to keep the place clean on a daily basis. Parking will be provided behind the present store.

9. The Office of Planning and Development, by report dated May 21, 1982, recommended that the application be denied. The OPD reported that it had not identified any unique or peculiar condition or situation of this property in terms of its lot size, width, shape, location on an alley and major arterial or its physical development which could lend support for a finding that the property could not be used for a purpose for which it is zoned. The Board so finds.

10. The Upper Georgia Avenue Planning Committee and private individuals, by letters of record, opposed the application on the grounds that the applicant had not met its burden of proof and that, the variance if granted, would have an adverse affect on the neighborhood. As to the burden of proof, it was argued that the very existence of the subject use at this time established a viable permitted use for the subject property. The Board so finds. The adverse affect was the accumulation of trash and litter, noise and traffic impact from people outside the neighborhood.

11. Advisory Neighborhood Commission 4A, by letter of May 25, 1982, reported that the Commission supported the Upper Georgia Avenue Planning Committee in its opposition to this approval. If the amusement arcade is allowed in this location, there will be serious problems of traffic, noise pollution, litter, loitering, and a further degradation of a stable, secure and beautiful neighborhood. In view of the above, Advisory Neighborhood Commission 4A strongly opposed

approval of the above-numbered applications. The Board concurs in the ANC recommendation as to the burden of proof issue. As to the issue of substantial detriment, the Board for reasons stated below did not entertain the issue.

12. The applicant when aware of opposition at the public hearing stated that the business could and would function as presently constituted.

13. The Board on its own Motion, at the close of the applicant's case in-chief, denied the application for failure to sustain the burden of proof. The testimony of the opposition present at the public hearing was not given.

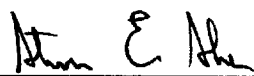
CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a use variance, the granting of which requires substantial evidence of a hardship that is inherent in the property so that the property cannot be used for a purpose for which it is zoned. The Board concludes that no such hardship exists. As found in the Findings, a viable C-2-A use is in existence on the site. There is no need for a use variance, nor a basis to support it. The Board concludes that the hardship issue is dispositive of the application. The Board need not consider the issue of substantial detriment. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 3-0 (Connie Fortune, Walter B. Lewis and Charles R. Norris to DENY; William F. McIntosh and Douglas J. Patton not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

DEC - 3 1982

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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